

AMENDED IN SENATE APRIL 15, 2009

**SENATE BILL**

**No. 541**

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**Introduced by Senator Pavley**

February 27, 2009

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An act to amend Sections 13002, 13004, 13005, 13006, 18400, 19202, 19214, and 19214.5 of, to add Section 19212.5 to, and to repeal Section 13007 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Pavley. Elections: ballot cards and voting systems.

Existing law requires the Secretary of State to adopt regulations governing the manufacture, distribution, and inventory control of punchcards, and requiring the inspection of facilities that manufacture and store punchcards. Existing law requires the Secretary of State to approve a punchcard manufacturer prior to the manufacturer's providing of punchcards for use in California elections.

This bill would instead require the Secretary of State to adopt regulations governing the manufacture, finishing, quality standards, and inventory control of ballot cards, and requiring the *biennial* inspection of facilities that manufacture, finish, and store ballot cards. The bill would require that the costs of the *biennial* inspection be paid for by the ballot card manufacturer or finisher. The bill would require that, no later than 5 days prior to inspection, the ballot card manufacturer or finisher disclose to the Secretary of State known flaws or defects in its current or past manufacturing or finishing process of ballot cards or manufactured or finished ballot cards that could adversely affect the casting or tallying of votes. The bill would require a manufacturer or finisher of ballot cards to notify the Secretary of State and affected local

elections officials of defects that would adversely affect that casting or tallying of ballot cards that it discovers after approval by the Secretary of State within 2 business days of their discovery.

Existing law provides for a revolving fund that is continuously appropriated for the purpose of purchasing ballot paper and punchcards.

This bill would repeal these provisions.

Existing law provides that a person or corporation owning or being interested in a voting system or part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. Existing law requires the Secretary of State to issue a report regarding whether, in his or her opinion, the voting system or part of a voting system can be safely used.

This bill would instead require that a vendor of a voting system or part of a voting system include in its application to the Secretary of State notification of a known defect, flaw, or error in the hardware, software, or firmware of the voting system or a part of the voting system. The bill would also require the vendor to notify the Secretary of State of such a defect, flaw, or error discovered either after the vendor submitted his or her application but prior to the issuance of the Secretary of State's report or after the voting system or the part of a voting system is approved by the Secretary of State. The bill would also require the Secretary of State to notify and issue a report to the United States Election Assistance Commission regarding the defects, flaws, or errors made known by the vendor at the initiation of, during, or after the approval process.

Existing law permits the Secretary of State to seek damages for ~~the~~ *an* unauthorized change in hardware, software, or firmware in a certified or conditionally certified voting system.

This bill would instead permit the Secretary of State to seek civil penalties for ~~an~~ *a known but* undisclosed defect, flaw, or error in hardware, software, or firmware in an approved or conditionally approved voting system and for a violation of the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13002 of the Elections Code is amended  
2 to read:

1 13002. Ballot paper and ballot cards used by a jurisdiction  
2 holding an election pursuant to the laws of California shall be  
3 tinted and watermarked or overprinted with a design, to be  
4 furnished by the Secretary of State, so that the watermark or  
5 overprint shall be plainly discernible.

6 SEC. 2. Section 13004 of the Elections Code is amended to  
7 read:

8 13004. (a) The Secretary of State shall adopt regulations  
9 governing the manufacture, finishing, quality standards,  
10 distribution, and inventory control of ballot cards and requiring  
11 the ~~periodic~~ *biennially* inspection of the manufacturing, finishing,  
12 and storage facilities involving ballot cards. The Secretary of State  
13 shall also approve each ballot card manufacturer or finisher prior  
14 to a manufacturer or finisher providing ballot cards for use in  
15 California elections.

16 (b) The costs associated with *biennial* facility inspections shall  
17 be paid by the ballot card manufacturer or finisher. Prior to  
18 inspection, the Secretary of State may require the manufacturer or  
19 finisher to deposit sufficient funds to guarantee the payment of the  
20 inspection charges.

21 (c) ~~Not~~ *Not* later than five working days before the Secretary of  
22 State begins his or her initial inspection, the ballot card  
23 manufacturer or finisher shall disclose to the Secretary of State in  
24 writing ~~a~~ *any* known flaw or defect in its current or past ballot card  
25 manufacturing or finishing process or manufactured or finished  
26 ballot cards that could adversely affect the casting or tallying of  
27 votes. Once approved by the Secretary of State, the ballot card  
28 manufacturer or finisher shall notify the Secretary of State and the  
29 affected local elections officials in writing within two business  
30 days after it discovers any flaw or defect in its ballot card  
31 manufacturing or finishing process or manufactured or finished  
32 ballot cards that could adversely affect the casting or tallying of  
33 votes.

34 SEC. 3. Section 13005 of the Elections Code is amended to  
35 read:

36 13005. (a) Before a user may purchase ballot cards, the user  
37 shall request in writing a release for a specific quantity of these  
38 ballot cards from the Secretary of State. If the request is in order,  
39 the Secretary of State shall issue a written release for that quantity  
40 to the manufacturer, or to the authorized warehouse, and to the

1 user. The format, text, and use of the request and release shall be  
2 governed by regulations adopted by the Secretary of State.

3 (b) Nothing in this section ~~shall prohibit~~ *prohibits* a verbal  
4 request or verbal release, provided that this verbal request or verbal  
5 release is immediately confirmed in writing. The regulations shall  
6 expressly deny the manufacturing of ballot cards without a specific  
7 release.

8 SEC. 4. Section 13006 of the Elections Code is amended to  
9 read:

10 13006. A user, vendor, or manufacturer shall not warehouse  
11 for a subsequent election ballot paper or ballot cards furnished or  
12 released by the Secretary of State for a specific election without  
13 first obtaining authorization in writing from the Secretary of State  
14 for the storage. The authorization shall include the particular details  
15 of the amount to be stored so that audit controls may be established  
16 and maintained. Ballot paper or ballot cards not used in that  
17 election, not authorized to be retained for subsequent elections,  
18 and not returned to the Secretary of State, shall be destroyed. A  
19 certificate of destruction setting forth the date of destruction and  
20 the amount of the ballot paper or ballot cards destroyed shall be  
21 transmitted to the Secretary of State.

22 SEC. 5. Section 13007 of the Elections Code is repealed.

23 SEC. 6. Section 18400 of the Elections Code is amended to  
24 read:

25 18400. A person who makes, uses, keeps, or furnishes to others,  
26 paper or cards watermarked or overprinted in imitation of ballot  
27 paper or ballot cards is punishable by a fine not exceeding one  
28 thousand dollars (\$1,000), or by imprisonment in the state prison  
29 for 16 months, two or three years, or by both the fine and  
30 imprisonment.

31 SEC. 7. Section 19202 of the Elections Code is amended to  
32 read:

33 19202. (a) A person or corporation owning or being interested  
34 in a voting system or a part of a voting system may apply to the  
35 Secretary of State to examine it and report on its accuracy and  
36 efficiency to fulfill its purpose. As part of its application, the  
37 vendor of a voting system or the part of a voting system shall notify  
38 the Secretary of State in writing of ~~a~~ *any* known defect, flaw, or  
39 error in the *version of the* hardware, software, or firmware of the  
40 voting system or a part of the voting system *submitted*. The

1 Secretary of State shall not begin his or her examination until he  
2 or she receives a completed application from the vendor of the  
3 voting system or the part of the voting system. The vendor shall  
4 also notify the Secretary of State in writing of ~~a~~ *any* defect, flaw,  
5 or error in the *version of the* hardware, software, or firmware of  
6 the voting system or a part of the voting system *submitted that is*  
7 *discovered after the application is submitted and before the*  
8 *Secretary of State submits the report required by Section 19207.*  
9 The Secretary of State shall complete his or her examination  
10 without undue delay.

11 (b) ~~Within 72 hours after~~ *After* receiving a vendor's written  
12 notification of a defect, flaw, or error, the Secretary of State shall  
13 notify the United States Election Assistance Commission or its  
14 successor entity of the problem *as soon as practicable so as to*  
15 *present a reasonably complete description of the problem.* ~~Within~~  
16 ~~30 days after receiving a vendor's written notification of a defect,~~  
17 ~~flaw, or error, the~~ *The* Secretary of State shall *subsequently* submit  
18 a report regarding the problem to the United States Election  
19 Assistance Commission or its successor entity. *The report shall*  
20 *include any report regarding the problem submitted to the*  
21 *Secretary of State by the vendor.*

22 SEC. 8. Section 19212.5 is added to the Elections Code, to  
23 read:

24 19212.5. (a) When a voting system or a part of a voting system  
25 has been approved by the Secretary of State, the vendor shall notify  
26 the Secretary of State and all local elections officials who use the  
27 system in writing of ~~a~~ *any* defect, flaw, or error in the hardware,  
28 software, or firmware of the voting system or a part of the voting  
29 system ~~within five working~~ *30 calendar* days after the vendor  
30 learns of the defect, flaw, or error.

31 (b) ~~No~~ *Not* later than January 8, 2010, the vendor of a voting  
32 system or a part of a voting system that has been approved by the  
33 Secretary of State prior to the effective date of this section shall  
34 notify the Secretary of State and all local elections officials who  
35 use the system in writing of ~~a~~ *any* defect, flaw, or error in the  
36 hardware, software, or firmware of the voting system or a part of  
37 the voting system the vendor was aware of prior to January 1,  
38 2010.

39 (c) ~~Within 72 hours after~~ *After* receiving a vendor's written  
40 notification of a defect, flaw, or error pursuant to subdivision (a)

1 or (b), the Secretary of State shall notify the United States Election  
2 Assistance Commission or its successor entity of the problem *as*  
3 *soon as practicable so as to present a reasonably complete*  
4 *description of the problem.* ~~Within 30 days after receiving a~~  
5 ~~vendor's written notification of a defect, flaw, or error, the~~ *The*  
6 Secretary of State shall *subsequently* submit a report regarding the  
7 problem to the United States Election Assistance Commission or  
8 its successor entity. *The report shall include any report regarding*  
9 *the problem submitted to the Secretary of State by the vendor.*

10 SEC. 9. Section 19214 of the Elections Code is amended to  
11 read:

12 19214. The Secretary of State may seek injunctive and  
13 administrative relief when a voting system or a part of a voting  
14 system has been compromised by the addition or deletion of  
15 hardware, software, or firmware without prior approval or is  
16 defective due to ~~an undisclosed~~ *a known* hardware, software, or  
17 firmware flaw, defect, or error *that has not been disclosed pursuant*  
18 *to Section 19202 or 19212.5.*

19 SEC. 10. Section 19214.5 of the Elections Code is amended  
20 to read:

21 19214.5. (a) The Secretary of State may seek all of the  
22 following relief for an unauthorized change or ~~undisclosed~~ *a known*  
23 defect, flaw, or error *that has not been disclosed pursuant to*  
24 *Section 19202 or 19212.5* in hardware, software, or firmware in  
25 a voting system approved or conditionally approved in California:

26 (1) A civil penalty from the offending party or parties, not to  
27 exceed ten thousand dollars (\$10,000) per violation. For purposes  
28 of this subdivision, each voting system component found to contain  
29 the unauthorized hardware, software, or firmware or ~~an undisclosed~~  
30 *a known* hardware, software, or firmware flaw, defect, or error  
31 *that has not been disclosed pursuant to Section 19202 or 19212.5*  
32 shall be considered a separate violation. A penalty imposed  
33 pursuant to this subdivision shall be apportioned 50 percent to the  
34 county in which the violation occurred, if applicable, and 50  
35 percent to the Office of the Secretary of State for purposes of  
36 bolstering voting systems security efforts.

37 (2) Immediate commencement of proceedings to withdraw  
38 approval for the voting system in question.

1 (3) Prohibiting the manufacturer or vendor of a voting system  
2 from doing elections-related business in the state for one, two, or  
3 three years.

4 (4) Refund of all moneys paid by a local agency for a voting  
5 system or a part of a voting system that is compromised by an  
6 unauthorized change or modification or is defective due to an  
7 undisclosed hardware, software, or firmware flaw, defect, or error,  
8 whether or not the voting system has been used in an election.

9 (5) Any other remedial actions authorized by law to prevent  
10 unjust enrichment of the offending party.

11 (b) Prior to seeking any measure of relief under this section, the  
12 Secretary of State shall hold a public hearing. The Secretary of  
13 State shall give notice of the hearing in the manner prescribed by  
14 Section 6064 of the Government Code in a newspaper of general  
15 circulation published in Sacramento County. The Secretary of  
16 State also shall transmit written notice of the hearing, at least 30  
17 days prior to the hearing, to each county elections official, the  
18 offending party or parties, a person that the Secretary of State  
19 believes will be interested in the hearing, and a person who  
20 requests, in writing, notice of the hearing.

21 (c) The decision of the Secretary of State, to seek relief under  
22 this section, shall be in writing and state his or her findings. The  
23 decision shall be open to public inspection.